



Project Vote is the leading technical assistance and direct service provider to the voter engagement and civic participation community. Since its founding in 1982, Project Vote has provided professional training, management, evaluation and technical services on a broad continuum of key issues related to voter engagement and voter participation activities in low-income and minority communities.

RESTORING VOTING RIGHTS TO FORMER FELONS

The story of American democracy is often told as the steady expansion of voting but history has not yet caught up with one group—former felons. In the early American political system, the right to vote was reserved for white males over the age of 21 who owned land. In 1920, after the passage of the 19th Amendment, it was extended to women nationwide. The right to vote was technically extended to African-Americans in 1868 with the passage of the 14th Amendment and effectively enforced with the passage of the Civil Rights Act of 1964. In 1971, Congress lowered the legal voting age to 18. Yet, in all but two states, citizens with felony convictions are prohibited from voting either permanently or temporarily. The United States is the only country that permits permanent disenfranchisement of felons even after completion of their sentences.

Policies on felony re-enfranchisement among the 50 states are so inconsistent as to create confusion among, not only those former offenders who wish to regain the right to vote, but also the very officials charged with implementing the laws. The result is a network of misinformation that discourages some legally eligible voters from registering to vote and places undue restrictions on others during the registration process. Former offenders who are unaware of their state's restrictions may slip through, register, vote, and in doing so, unwittingly commit a new crime.

Fair and consistent felony re-enfranchisement laws can contribute to the rehabilitation process, and reduce the harmful impact on low-income and minority communities where a disproportionately high number of individuals are disenfranchised due to felony convictions. The right to vote helps to foster a sense of community for those who feel disconnected and unfairly excluded from civic participation. Priority must be given to developing a nationwide policy that allows for reinstatement of voting rights, as well as education of former offenders regarding restoration procedures.

739 8th Street, SE
Suite 202
Washington, D.C. 20003

2101 South Main Street
Little Rock, AR 72206
1-800-546-8683

www.projectvote.org

Restoring Voting Rights to Former Felons

Issues in Election Administration: Policy Brief Number 12

01.05.07



This policy brief examines the varying ways in which states regulate voting by felons, and concludes with policy recommendations.

Felon Voting Rights Vary Widely By State

A citizen who is convicted of a felony in Vermont can cast an absentee ballot from his jail cell while serving his sentence. If the same citizen commits the same crime in Virginia, he can never vote again unless the government acts to restore his rights. In other states, he may be able to vote once he completes some combination of parole, probation, and restitution. Re-enfranchisement may also depend upon whether or not an individual's child support payments are in arrears, or how long it has been since he has fulfilled the terms of his sentence. If an individual moves from one state to another after completing a felony sentence, election officials in the new state may not know whether or not he is eligible to register and vote. If he does not inform them of his status as a former felon, they may never know.

Policies on felon voting in the 50 states fall into four broad categories: (1) permanent disenfranchisement for all felony offenders, (2) permanent disenfranchisement for some felony offenders, (3) re-enfranchisement after completion of sentence including parole and sometimes probation, and (4) states with minimal disenfranchisement.

Permanent Disenfranchisement for All Felony Offenders

In three states (Florida, Kentucky, and Virginia) a felony conviction leads to the permanent loss of voting rights. The exception occurs when a former offender is able to have individual rights restored by the government. For example, in Kentucky, if an ex-offender submits a letter or essay detailing why his voting rights should be restored, along with character references, the state may restore his rights.¹

Permanent Disenfranchisement for Some Felony Offenders

In Alabama, certain felonies including those involving "moral turpitude" result in a permanent loss of the right to vote, while others allow for re-enfranchisement after the sentence is complete and all fines and fees are paid. Delaware has a similar law, with the addition of a five-year waiting period before restoration. In Arizona, a first-time offender can have rights restored upon completing the sentence (including parole and probation) and payment of "legal financial obligations." A second offense makes the loss of rights permanent.²

Permanent Disenfranchisement for All Offenders	
Florida	Virginia
Kentucky	
Permanent Disenfranchisement for at Least Some Offenders	
Alabama	Mississippi
Arizona	Nevada
Delaware	Tennessee
Maryland	Wyoming
Voting Rights Restored After Completion of Sentence Including Parole and Probation	
Alaska	New Jersey
Arkansas	New Mexico
Georgia	North Carolina
Idaho	Oklahoma
Iowa	South Carolina
Kansas	Texas
Louisiana	Washington
Minnesota	West Virginia
Missouri	Wisconsin
Nebraska	
Voting Rights Restored After Completion of Sentence Including Parole (Probationers Can Vote)	
California	New York
Colorado	South Dakota
Connecticut	
Voting Rights Restored After Completion of Sentence (Parolees and Probationers Can Vote)	
District of Columbia	New Hampshire
Hawaii	North Dakota
Illinois	Ohio
Indiana	Oregon
Massachusetts	Pennsylvania
Michigan	Rhode Island
Montana	Utah
No Disenfranchisement of Felony Offenders	
Maine	Vermont



An offender in Maryland, first convicted of an “infamous crime,” can have rights restored upon completion of imprisonment, parole, probation, community service, restitution, and fines. Subsequent convictions result in a three-year post-sentence waiting period before rights can be restored. However, if any such conviction is for a violent crime, the loss of rights is permanent. Nevada offers restoration to first-time offenders only if the offense is non-violent; any violent crime, or any subsequent crime regardless of violence, results in permanent loss of the right to vote.³

In Mississippi, there are ten specific felony offenses that result in permanent disenfranchisement. No other offenses, even other felonies, result in the loss of voting rights at all. In Wyoming, nonviolent first offenders can have their rights restored five years after completing their sentences. Repeat or violent offenders permanently lose the right to vote.⁴

Tennessee has the most convoluted system. Due to frequent changes in the law, “the process for restoration of rights differs depending on which of five different time periods a felony conviction was acquired.”⁵

Re-enfranchisement After Completion of Sentence, Including Parole and Sometimes Probation

Nineteen states automatically restore voting rights to former offenders after they have completed their entire sentence, including parole and probation. Another five allow felony probationers to vote if they have been released from prison and have completed parole.

States with Minimal Disenfranchisement

Fourteen states automatically restore the right to vote upon release from prison. Two states (Maine and Vermont) do not disenfranchise at all for felony convictions – an offender can vote by absentee ballot from his prison cell.

Legal Concerns

Legal challenges to felony disenfranchisement have highlighted the fact that many laws contravene constitutional guarantees under the Equal Protection Clause and the 24th Amendment prohibition against poll taxes. Though state laws generally withstand constitutional scrutiny, some challenges have been successful.

Equal Protection

Legal scholars argue that inconsistent implementation of state felony disenfranchisement laws by election officials violate the Equal Protection Clause of the Fourteenth Amendment. To overcome an equal protection challenge, a state should have to show that a state law is necessary to promote a legitimate state interest and narrowly tailored to do so.⁶ Unfortunately, in a 1974 case, the U.S. Supreme Court exempted felony disenfranchisement provisions from strict scrutiny.⁷ However, the Supreme Court later declared state felony disenfranchisement policies that reflect purposeful racial discrimination in violation of the Fourteenth Amendment.⁸

CASE STUDY: Inconsistent Application of Felon Voting Laws in New York.

A 2005 study conducted by The Brennan Center for Justice and Demos found that more than one-third of local election boards in New York State were improperly denying the right to vote to ex-offenders serving terms of parole or probation – and that some of these boards were doing so in conscious violation of state law. 32% of boards illegally requested documentation before allowing these individuals to register.⁹ This practice can effectively disenfranchise even a person who is legally entitled to vote, and similar practices may exist in other states as well.

“A Modern-Day Poll Tax”

As previously noted, Alabama, Arizona and Delaware all have payment of restitution, fines and fees as part of the re-enfranchisement requirements. In at least one of Tennessee’s five different sets of standards, an offender is required to be current with child support, as well. Regardless of compliance with all other aspects of a sentence, “because of provisions like these, people in poor financial situations... will continue to be barred from the polls.”¹⁰ This, in effect, creates the same kind of poll tax that was once used to circumvent the 14th Amendment and prevent African-Americans from voting. In Washington, King County Superior Court Judge Michael Spearman agreed with this assessment, striking down state law that withheld the right to vote from former offenders until all fines, court costs, and restitution were paid. The plaintiffs in the lawsuit brought before him were all former offenders who were making restitution payments at the state’s excessive 12% interest rate but had not yet completely met their financial obligations.¹¹



Re-Enfranchisement Helps Restore Disproportionately Impacted Communities

Minority and low-income citizens are over-represented in the criminal justice system. The disenfranchisement rate of African-American men is seven times the national average at 13%.¹² Four of every five drug offenders in state prison are African-American or Latino. However, this number is largely due to inconsistencies in prosecution and sentencing and is not indicative of greater drug use in either community.¹³ Research has shown that poor and/or non-white persons are more likely to be arrested, charged, convicted, and sentenced to prison than their wealthier, white counterparts.¹⁴ This over-representation in prisons results in an under-representation of these same groups at the polls.

Those convicted are not the only ones who lose political representation as a result of stringent disenfranchisement policies. Studies have shown that many convicted felons come from the same inner-city neighborhoods. As a result, when felons lose the right to vote, it weakens the political power of the entire neighborhood, including residents who have committed no crime.¹⁵ “Increasingly, the ability of these communities to gain political representation and influence – and therefore access to public resources – is being thwarted by the American race to incarcerate.”¹⁶ Clearly, the de facto disenfranchisement of law-abiding citizens is an unacceptable consequence of a form of punishment intended for those who have committed a crime.

Finally, reintegration into society is essential to ensure community safety and reduce the risk of recidivism among those who have committed crimes. According to the Brennan Center for Justice, “[r]estoring the right to vote helps reintegrate people with criminal records into society and, by increasing voter participation, strengthens democracy.”¹⁷ Civic participation instills in the offender a feeling of belonging in the community and a sense of responsibility toward others. This connection to others reduces the criminal tendencies and helps restore former felons to contributing members of society.

In contrast, withholding the right to vote fosters a sense of exclusion and disconnect from the larger community. In a survey of poor, homeless citizens with felony convictions, Matthew Cardinale gave voice to this sentiment, noting that

many individuals responded that disenfranchisement caused them to feel they were “somehow only a fraction of a citizen.” Respondents also indicated that the sense of separation left little motivation to change criminal behavior.¹⁸

Awareness of Rights

In addition to a feeling of alienation among disenfranchised ex-offenders, Cardinale’s survey also revealed surprising information about education of ex-offenders regarding voting rights. 86% of respondents were confused about their voting rights; 90% said they were not told during the legal process that they may lose their right to vote; and 96% received no information from prison or parole staff regarding re-enfranchisement.¹⁹ Marc Mauer and Tushar Kansal of The Sentencing Project recommend that corrections officials in every state be required to both inform persons under their supervision of re-enfranchisement policies and assist in the re-enfranchisement process.²⁰

Momentum for Change

In addition to the King County ruling, other developments in the movement for felony re-enfranchisement are encouraging to voting rights advocates. In Alabama, Jefferson County Circuit Judge Robert Vance, Jr., issued a ruling allowing ex-offenders the right to vote unless and until the state legislature defines “moral turpitude,” the standard by which a felony conviction results in disenfranchisement.²¹ Florida legislators passed a bill requiring county jails to provide assistance in applying for restoration of voting rights to inmates upon their release, the Tennessee legislature approved a bill to streamline the restoration process, and the New York Assembly passed the Voting Rights Notification and Registration Act to inform and assist former felons in accessing their voting rights.²²

Perhaps most encouraging is the fact that in the 2006 midterm elections, Rhode Island voters approved the restoration of voting rights to ex-offenders serving a sentence of parole or probation.²³ The former law provided for restoration of rights only after parole and probation had been completed. Included in the law is the provision that “[t]he secretary of state shall ensure that persons who have become eligible to vote because of their discharge from incarceration face no continued barriers to registration or voting resulting from felony convictions.”²⁴



In Kentucky, a state with one of the country's harshest felon voting laws, two initiatives will be introduced in the 2007 General Assembly. Senator Gerald Neal proposes a tiered system of re-enfranchisement, with the waiting period for restoration of rights dependent upon the length of the original sentence. Representatives Jesse Crenshaw and Darryl Owens' initiative would allow ex-offenders to regain their rights immediately upon release.²⁵ Passage of either of these measures would reduce the number of states with permanent disenfranchisement to two.

Policy Recommendations

Restore voting rights to felons upon release

Project Vote recommends that voting rights be restored to felons upon release from prison. Restoration of the right to vote should be a fundamental part of an ex-offender's reintegration into society. This right should be extended to all ex-offenders not currently in state or federal custody, regardless of status as a parolee or probationer. Increased civic participation and responsibility will provide individuals with a sense of investment and involvement in their respective communities, and decrease the risk of subsequent offenses. A uniform policy will also be easier for election officials to administer and reduce the potential of former felons voting unlawfully.

Notification

Individuals on trial for a felony offense should be notified before criminal proceedings that conviction of a felony, including conviction for a lesser felony charge as the result of a plea bargain, would result in the loss of certain civil rights, including the right to vote. Upon conviction and sentence, the offender should be notified of his or her eligibility for restoration of voting rights, and that he or she is entitled to assistance with voter registration as part of the release process.

Consistent and Enforceable Policy

A policy should be adopted by each state that will allow for uniform enforcement with minimal chances for confusion and complication. The most practical policy would allow former offenders to regain their voting rights upon release from prison. This would both eliminate election officials' and correction officials' need to actively monitor a former offender's voting status, and reduce the probability of penalizing entire communities largely based upon low-income and minority status.

Conclusions

Restoring the right to vote to ex-offenders is an integral aspect of reintegration into society. Consistent policies are necessary to prevent large-scale disenfranchisement not only of the ex-offenders themselves, but also of the communities to which they belong. Society as a whole benefits when a representative government truly represents all its citizens.

End Notes

¹ "Disenfranchised Americans," America Magazine, October 16, 2006.

² Arizona Revised Statutes 13-905.

³ Nevada Revised Statutes 213.090, 213.155, 213.157, 293.540

⁴ Wyoming Statutes 7-13-105

⁵ "Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States," Marc Mauer and Tushar Kansal, 2005.

⁶ Richardson v. Ramirez, 418 U.S. 24 (1974).

⁷ Ibid.

⁸ Hunter v. Underwood, 471 U.S. 222 (1985).

⁹ "Boards of Election Continue Illegally To Disenfranchise Voters With Felony Convictions," 2006.

¹⁰ "Disenfranchised Americans," America Magazine, October 16, 2006

¹¹ "Washington Court Strikes Down Modern Form of Poll Tax," ACLU, March 28, 2006.

¹² www.brennancenter.org

¹³ "Disenfranchisement of Felons: The Modern Day Voting Rights Challenge," Marc Mauer, 2002.

¹⁴ "Liberal and Republican Arguments Against the Disenfranchisement of Felons," Jeffrey Reiman, 2005.

¹⁵ Ibid.

¹⁶ "Disenfranchising Felons Hurts Entire Communities," Marc Mauer, 2004.

¹⁷ www.brennancenter.org

¹⁸ "Triple-Decker Disenfranchisement: First-Person Accounts of Losing the Right to Vote among Poor, Homeless Americans with a Felony Conviction," Matthew Cardinale, 2004.

¹⁹ Ibid.

²⁰ "Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States," Marc Mauer and Tushar Kansal, 2005.

²¹ "Another voting mess: The Alabama Legislature must fix its flawed felon statute," Huntsville Times, August 25, 2006.

²² "Disenfranchisement: Year in Review," The Sentencing Project, December 18, 2006.

²³ "Rhode Island approves measure giving felons on parole right to vote," Joshua Pantescio, 2006.

²⁴ Rhode Island Statutes 17-9.2-3(f)

²⁵ "Fighting for their rights: Officials to rally for restoration of felons' voting privileges," Ronica Shannon, 2006.



Appendix

Permanent Disenfranchisement for All Offenders		
Florida	<i>Statutes 97.041(2)(b); 940.01(1); 940.05</i>	Former offender is prohibited from voting unless individual rights are restored through an application process involving the Clemency Board and/or Office of Executive Clemency.
Kentucky	<i>State Constitution Section 145</i>	Former offender is prohibited from voting unless voting rights are restored by executive pardon.
Virginia	<i>State Constitution Article II Section 1</i>	Former offender is prohibited from voting unless voting rights are restored by the Governor or "other appropriate authority."
Permanent Disenfranchisement for At Least Some Offenders		
Alabama	<i>State Constitution Section 182</i>	Former offender prohibited from voting if convicted of one of a list of crimes including "infamous crime" or those "involving moral turpitude" or "any crime punishable by imprisonment in the penitentiary"
Arizona	<i>State Statutes, Title 13 Chapter 9</i>	First-time felony offender can have rights restored upon completion of probation and restitution/fees/fines; after a second offense rights can only be restored by the judge who discharges him from probation.
Delaware	<i>State Constitution Article V Section 2; State Statutes, Title 15 Chapter 61</i>	Certain felonies (including murder, manslaughter, bribery or abuse of office, or sexual offenses) result in permanent disenfranchisement. For other felonies, parole, probation, fees, fines and restitution must have been completed at least five years prior to application for restoration of voting rights. Application is reviewed by Office of State Court Collections Enforcement and Department of Correction.
Maryland	<i>State Statutes, Title 3 Chapter 1</i>	First-time felony offender convicted of "theft or other infamous crime" can have rights restored upon completion of probation and restitution/fees/fines, community service. Convictions for buying or selling votes, or a second or subsequent conviction for violent crime prevents restoration. Any other second offense requires a three-year waiting period after completion of all aspects of the sentence.
Mississippi	<i>State Statutes, Title 23 Chapter 15; State Constitution Article 12 Section 241</i>	Ten felonies (murder, rape, bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, and bigamy) result in permanent disenfranchisement. Other felonies do not result in disenfranchisement.
Nevada	<i>State Statutes 213.090, 213.155, 213.157, 293.540</i>	Offenders convicted of a felony in another state must have restored their voting rights pursuant to that state's laws. Offenders convicted in Nevada can have rights restored upon pardon, honorable discharge from parole, or upon release from prison except when convicted of certain categories of felony.
Tennessee	<i>State Constitution Article IV Section 2; Public Chapter 860 2-2-139; Public Chapter 740 4(70); Crutchfield v. Collins 607 S.W. 2D 478</i>	Dependent upon when a felony was committed, and the nature of the felony, a person may not lose the right to vote at all. If the right to vote is lost, it may be restored through reversal of the conviction, receipt of a full pardon, verification that the crime was not declared "infamous," restoration of rights by a circuit court, expiration of maximum sentence, successful completion of parole including restitution, and/or full payment of child support.
Wyoming	<i>State Constitution 97-6-006; State Statutes Title 22 Chapter 3; Senate File 65 (passed 2003)</i>	First-time nonviolent offenders are eligible to apply for restoration of voting rights 5 years after their sentence is complete, including parole and probation. Violent or repeat offenders can only restore voting rights by applying through the Governor.
Voting Rights Restored After Completion of Sentence Including Parole and Probation		
Alaska	<i>State Statute 15.05.030</i>	Offender regains the right to vote after completion of prison, parole and probation
Arkansas	<i>Amendment 51</i>	Rights may be restored if offender provides proof of discharge from probation or parole including fees, fines and restitution
Georgia	<i>State Constitution Article II Section 1 Paragraph 3</i>	"No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence."
Idaho	<i>State Constitution Article VI Section 3</i>	Citizenship rights must be restored upon completion of sentence in order to restore right to vote.
Iowa	<i>State Statutes 48A.6, 914.2-7</i>	Rights must be restored by Governor or President upon completion of sentence; regular reviews take place of applications submitted to Parole Board
Kansas	<i>State Constitution Article V Paragraph 2</i>	Offender regains the right to vote after completion of prison, parole and probation
Louisiana	<i>State Statute 102.A.1</i>	Offender regains the right to vote after completion of prison, parole and probation



Minnesota	<i>State Statutes 201.014(1)(a); Minnesota Rules 8200.9115; Constitution Article VII Section 1</i>	Offender regains the right to vote after completion of prison, parole and probation
Missouri	<i>Missouri Revised Statutes 115.133.2</i>	Offender regains the right to vote after sentence is completed, including parole and probation, except after felonies or misdemeanors related to the right of suffrage.
Nebraska	<i>State Statute 32-313</i>	Offender is eligible to register two years after completion of sentence including parole.
New Jersey	<i>State Constitution Article II Section 1 Paragraph 7; State Statutes 19:4-1</i>	Offender regains the right to vote after completion of prison, parole and probation
New Mexico	<i>Statutes Article VII Section 1; 31-13-1</i>	Offender regains the right to vote after completion of prison, parole and probation
North Carolina	<i>State Constitution Article VI Section 2; General Statutes 13-1</i>	Offender regains the right to vote after completion of prison, parole and probation
Oklahoma	<i>State Statutes 26-4-101</i>	Offender regains the right to vote after completion of prison, parole and probation
South Carolina	<i>State Statute 7-5-120</i>	Offender regains the right to vote after completion of prison, parole and probation
Texas	<i>State Statute 13.001(a)(4)(A)</i>	Offender regains the right to vote after completion of prison, parole and probation
Washington	<i>State Statutes 29A.08.520, 9.94A.637, 9.92.066, 9.96.050, 9.96.020</i>	Offender regains the right to vote after completion of prison, parole and probation
West Virginia	<i>State Statutes 3-1-3, 3-2-2</i>	Offender regains the right to vote after completion of prison, parole and probation
Wisconsin	<i>State Statutes 6.03(1)(b), 304.078(3)</i>	Offender regains the right to vote after completion of prison, parole and probation
Voting Rights Restored After Completion of Sentence Including Parole (Probationers Can Vote)		
California	<i>State Constitution Article II Sections 2, 4</i>	Offender loses right to vote only while imprisoned or on parole.
Colorado	<i>State Statutes 1-2-103(4)</i>	Offender loses right to vote only while imprisoned or on parole.
Connecticut	<i>State Statutes Chapter 143 9-46a</i>	Offender loses right to vote until imprisonment and parole completed and fines paid.
New York	<i>State Statutes 5-106, 5-400</i>	Offender loses right to vote only while imprisoned or on parole.
South Dakota	<i>State Statutes 24-5-2</i>	Offender loses right to vote only while imprisoned or on parole.
Voting Rights Restored After Completion of Sentence (Parolees and Probationers Can Vote)		
District of Columbia	<i>District Constitution Article V Section 1(d)</i>	Rights restored after release from incarceration.
Hawaii	<i>State Constitution Article II Section 2</i>	Rights restored after release from incarceration.
Illinois	<i>State Statute 5/3-5</i>	Rights restored after release from incarceration.
Indiana	<i>State Constitution Article 2 Section 8, State Statutes 3-7-13-4&5</i>	Offender loses right to vote only while in prison or "otherwise subject to lawful detention".
Massachusetts	<i>State Statutes Title VII Chapter 51 Section 1</i>	Rights restored after release from incarceration.
Michigan	<i>State Statutes 168.492a</i>	Rights restored after release from incarceration.
Montana	<i>State Statute 13-1-111</i>	Rights restored after release from incarceration.
New Hampshire	<i>State Statutes 607-A:2, 654:5</i>	Rights restored after release from incarceration.
North Dakota	<i>State Statutes 16.1-01-04, 12.1-33-03.1</i>	Rights restored after release from incarceration.
Ohio	<i>State Statutes 3503.21(A)(3), 2961.01(A)</i>	Rights restored after release from incarceration.
Oregon	<i>State Statutes 137.275, 137.281</i>	Rights restored after release from incarceration.
Pennsylvania	<i>State Statutes 961.501(a) ("Voting Rights Act of 1995")</i>	Offender has right to vote if he "has not been confined in a penal institution for a conviction of a felony within the last five years."
Rhode Island	<i>State Statutes 17-9.2-3(a, f)</i>	Rights restored after release from incarceration.
Utah	<i>State Statutes 20A-2-101.5</i>	Rights restored after release from incarceration.
No Disenfranchisement for Felony Offenders		
Maine	<i>State Statutes Title 21-A Chapter 3 Subchapter 2</i>	Eligibility to vote is not impacted by a felony conviction
Vermont	<i>State Statutes Title 17 Chapter 43 Subchapter 1</i>	Eligibility to vote is not impacted by a felony conviction